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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934.

No. 434

J. CONGDON SEABURY, as Receiver of The City National Bank of Sumter, S. C., a National Banking Association,

Petitioner,

vs.

BEATRICE C. GREEN, Administratrix D. B. N., C. T. A., of the Estate of Moses Green, Deceased, et al.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF COMMON PLEAS FOR SUMTER COUNTY, STATE OF SOUTH CAROLINA.

R. O. Purdy,
Raymon Schwartz,
Counsel for Petitioner.

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Petitioner,

vs.

BEATRICE C. GREEN, ADMINISTRATRIX D. B. N., C. T. A., OF THE ESTATE OF MOSES GREEN, DECEASED; LEON M. GREEN, ALVA I. GREEN, AARON H. GREEN, ETHEL GREEN BLATT, BEATRICE C. GREEN, AS GUARDIAN FOR HELEN GREEN, HERBERT GREEN AND ALLEN GREEN, AND HELEN GREEN, HERBERT GREEN, AND ALLEN GREEN.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable the Supreme Court of the United States:

Your petitioner, J. Congdon Seabury, as Receiver of The City National Bank of Sumter, S. C., a national banking association, respectfully asks this Court to review on writ

of certiorari a judgment of the Supreme Court of the State of South Carolina in the case of J. C. Seabury (J. Congdon Seabury) as Receiver of The City National Bank of Sumter, S. C., *versus* Beatrice C. Green, Administratrix D. B. N., C. T. A., of the Estate of Moses Green, deceased; Leon M. Green, Alva I. Green, Aaron H. Green, Ethel Green Blatt, Beatrice C. Green, as Guardian for Helen Green, Herbert Green and Allen Green, and Helen Green, Herbert Green and Allen Green, rendered on the 26th day of June, 1934. A petition for rehearing having been seasonably filed, which was refused on the 13th day of August, 1934, the remittitur which included the decision of the Supreme Court of South Carolina was transmitted to the Clerk of the Court of Common Pleas for Sumter County on the 14th day of August, 1934, as shown by a true copy of the record therein, herein filed. Under the practice prevailing on appeal in South Carolina, no final judgment separate from the opinion of the Supreme Court is rendered, and the opinion is the final judgment.

The matters involved and the reasons relied on by the petitioner for the allowance of the writ are:

I.

This action was brought by the petitioner (who is the duly appointed Receiver of The City National Bank of Sumter, S. C., a national banking association, which was declared insolvent by the Comptroller of the Currency of the United States on the 21st day of July, 1932), tried, and decided under Section 5151 of the revised statutes, with amendment of December 27th, 1913, C. 6, paragraph 23, 38 Stat. 273 and Section 5152 of the revised statutes, to recover for the statutory liability upon four shares of capital stock issued by the City National Bank to Moses Green,

who died March 17th, 1927, leaving of force his last Will and Testament.

Under the terms of his said Will, the four shares in question were transferred to his grandchildren, Helen Green, Herbert Green and Allen Green, who at the time of his death and still are, infants.

The case was submitted to the presiding Judge of the Court of Common Pleas for Sumter County upon an agreed Statement of Facts as follows:

1. It is agreed that this case should be tried before Judge Mann at Sumter without a jury.

2. It is further agreed that the late Moses Green, a citizen of Sumter County, South Carolina, departed this life on or about the 17th day of March, 1927, leaving of force his last will and testament, which was duly filed for probate in the office of the Judge of Probate for Sumter County, whereunder Leon M. Green, the named executor, duly qualified and entered upon the discharge of his duties.

3. That Beatrice C. Green, was, on or about April 15th, 1933, duly appointed and qualified as administratrix D. B. N., C. T. A., of the estate of Moses Green, deceased, and is now engaged upon the discharge of her duties as such.

4. That the heirs and distributees at law of the estate of Moses Green, deceased, are Leon M. Green, A. I. Green, A. H. Green, E. G. Blatt, and Helen, Herbert and Allen Green, the last three being infant children of a predeceased son of the said Moses Green, to-wit, Harry Green, And that Beatrice C. Green is the duly appointed and qualified general guardian of the said three infant children named.

5. That the City National Bank of Sumter, a national banking association, had a capital stock of $150,000.00, divided into 1,500 shares of $100.00 each, and that the said

Bank became insolvent on or about the 21st day of July, 1932, and its affairs were placed in the hands of J. C. Seabury, the duly appointed and qualified Receiver of the said bank.

6. That there was an insufficiency of assets to pay the creditors of said insolvent bank, and an assessment of $100.00 per share on the capital stock was ordered by the Comptroller on August 26, 1932, and the Receiver gave due notice thereof and demanded payment of the stockholders, which said payment was to be made on or before October 3, 1932. That after the appointment of Beatrice C. Green, as administratrix D. B. N., C. T. A., of the estate of Moses Green, deceased, that demand was made upon the said administratrix for the payment of the stock assessment upon four shares of stock standing in the names of Helen, Herbert and Allen Green, infant defendants herein. That the said administratrix has failed and refused to pay the same.

7. That L. M. Green, A. I. Green and A. H. Green are non-residents of the State of South Carolina. Certain real estate of theirs, respectively, has been attached in this proceeding.

8. That included among the assets of the estate of the late Moses Green, deceased, were a number of shares of bank stock in the said City National Bank of Sumter, S. C., which said stock constituted part of the residuary estate of the testator, and was distributed by the executor under the terms of the residuary clause of the will, four shares of said stock being transferred to the three infants named herein, the same appearing on the books of the said bank while it was a going concern. That at the same time there was transferred on the books of the bank to the adult

heirs named herein their pro rata number of said shares of stock under the provisions of the will.

9. That the executor has been duly discharged, and at the time of the said transfer of stock the said bank was a going concern, and no demand was made upon the executor for the payment of any bank stock liability.

10. That the adult heirs of the said Moses Green, deceased, have paid their respective stockholders liability upon the shares of stock standing in their names respectively, arising by reason of the insolvency of the said City National Bank of Sumter. And although due demand has been made, neither the infant defendants, the administratrix D. B. N., C. T. A., nor the adult heirs have paid the stockholders liability referred to in the Complaint, and the said assessment still remains open and unpaid.

11. That there remains in Sumter County real estate undivided, in which all of the heirs have an interest, of a value far in excess of the total amount of bank stock divided among the heirs, and the value of the infants' interest in said real estate far exceeds the face amount of the bank stock appearing in their names on the books of the bank.

12. That this suit is brought by the plaintiff, as the duly appointed Receiver of the City National Bank of Sumter, S. C., after a stock assessment was levied by the Comptroller of the Currency of the United States, the said suit being brought under the direction of the Comptroller of the Currency of the United States and pursuant to and under the national banking laws of the United States to enforce the liability upon the said four shares of stock.

The presiding judge, who heard this cause, filed his Decree, giving judgment in favor of your petitioner against

Beatrice C. Green, as administratrix D. B. N., C. T. A., of the estate of Moses Green, deceased, in the sum of four hundred ($400.00) dollars, with interest thereon from October 3, 1932, the date upon which the assessment upon said bank stock was payable, and subjected the real and personal property of the respondents, who were devisees and legatees under the will of Moses Green, deceased, to the payment of the said stock assessment in the event that the same was not collectible from said estate.

Thereafter, and within due course, the said administratrix D. B. N., C. T. A., the infant defendants and their duly appointed guardian *ad litem* appealed from this judgment to the Supreme Court of South Carolina.

The adult defendants, to-wit, Leon M. Green, Alva I. Green, Aaron H. Green and Ethel Green Blatt, although the judgment of the lower court subjected the property, which they owned and held as devisees and legatees of Moses Green, deceased, to the payment of the stock assessment, did not appeal.

The decision of the Supreme Court of South Carolina reversed the judgment of the lower court and relieved the adult defendants also from the operation of the said judgment although they did not appeal from the judgment below.

II.

Your petitioner earnestly contends that writ of certiorari should be granted by this Court to review and reverse the judgment of the State Supreme Court herein because:

The decision of the Supreme Court of South Carolina nullifies the operation of the Federal statute under which this suit was brought and in substance holds that no liability, upon the four shares of stock, rests upon the estate of Moses Green, deceased, nor does it subject the real and

personal property owned and held by the devisees and legatees of Moses Green, deceased, to payment of the said stock assessment, which is contrary to the decisions of this Court.

Aldrich v. *Bingham,* 131 Fed. 363;
Early v. *Richardson,* 280 U. S. 496;
Richmond v. *Irons,* 121 U. S. 27;
Mattison v. *Dent,* 176 U. S. 521;
Luce v. *Thompson,* 36 F. (2d) 183.

III.

The judgment of the Court of Common Pleas, in favor of your petitioner against the adult respondents herein in this cause, in so far as the property which they held as devisees and legatees of Moses Green, deceased, not having been appealed from, vested in your petitioner a property right. And the Supreme Court in granting to these adult respondents relief from the provisions of the decree of the lower court, from which they did not appeal, deprives your petitioner of his property without due process of law in contravention of the Fifth Amendment of the Federal Constitution, a judgment not appealed from being a vested property right.

Hoyt Metal Co. v. *Atwood,* 289 Fed. 454;
Merchants Bank v. *Ballou* (Va.), 32 S. E. 481;
Louisiana v. *New Orleans,* 215 U. S. 177.

WHEREFORE, for the foregoing reasons, because the said decision and judgment of the said Supreme Court decided the foregoing Federal questions in a way not in accord with the applicable decisions of this Court, your petitioner prays that a writ of certiorari be issued to the Court of Common Pleas for Sumter County where the remittitur of the Supreme Court of South Carolina is now filed (*Salamon* v. *State Tax Commission,* 278 U. S. 484, 73 L. Ed. 464), to the

end that said cause may be reviewed and determined by this Court, as provided by law, and that upon such review that the said judgment of the Supreme Court of South Carolina be ordered reversed.

J. CONGDON SEABURY,
As Receiver of The
City National Bank of Sumter, S. C.

Sumter, S. C., September 24th, 1934.

R. O. PURDY,
Sumter, S. C.,
RAYMON SCHWARTZ,
Sumter, S. C.,
Attorneys for J. Congdon Seabury, as Receiver of The City National Bank of Sumter, S. C.

SUPREME COURT OF THE UNITED STATES

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Petitioner,

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BEATRICE C. GREEN, ADMINISTRATRIX D. B. N., C. T. A., OF THE ESTATE OF MOSES GREEN, DECEASED; LEON M. GREEN, ALVA I. GREEN, AARON H. GREEN, ETHEL GREEN BLATT; BEATRICE C. GREEN, AS GUARDIAN FOR HELEN GREEN, HERBERT GREEN AND ALLEN GREEN; AND HELEN GREEN, HERBERT GREEN, AND ALLEN GREEN.

BRIEF FOR PETITIONER.

Official Report.

The decision of the Supreme Court of South Carolina has not yet been officially reported, but a certified copy thereof is attached herewith.

Statement of Grounds of Jurisdiction.

The date of the judgment sought to be reviewed herein was June 26, 1934, but a petition for rehearing having been seasonably filed, the same was not disposed of until August 13, 1934, when the Supreme Court of South Carolina refused the petition and on that day the clerk of that court sent down the remittitur to the clerk of the Court of Common Pleas for Sumter County, as shown by a letter of J. B. Westbrook, clerk of the Supreme Court, dated August 13, 1934, as follows: "I beg to advise that the petition for a rehearing, in Seabury against Green, has been dismissed by the Court and the remittitur is being sent down to-day."

This suit was brought, tried and decided under an Act dated June 3, 1864, c. 106, paragraph 12, 13 Stat. 102, as amended December 23, 1913, c. 6, paragraph 23, 38 Stat. 273, providing in part as follows:

> "Individual liability of shareholders; transfer of shares. The stockholders of every national banking association shall be held individually responsible for all contracts, debts, and engagement of such association, each to the amount of his stock therein, at the par value thereof in addition to the amount invested in such stock."

Judgment was rendered for petitioner herein, in the sum of four hundred ($400.00) dollars, with interest thereon from October 3, 1932, at the rate of seven per cent per annum. The administratrix D. B. N., C. T. A., and the infant defendants appealed to the Supreme Court of South Carolina. The judgment of the trial court was reversed as to the defendants who appealed, as well as those who did not appeal.

The jurisdiction of this Court is invoked under section U. S. C., Title 28, paragraph 344 (Jud. Code, paragraph

237), Par. (b). "It shall be competent for the Supreme Court, by certiorari, to require that there be certified to it for review and determination, with the same power and authority and with like effect as if brought up by writ of error, any cause wherein a final judgment or decree has been rendered or passed by the highest court of a State in which a decision could be had where is drawn in question the validity of a treaty or statute of the United States; or where is drawn in question the validity of a statute of any State, on the ground of its being repugnant to the Constitution, treaties, or laws of the United States; or where any title, right, privilege, or immunity is specially set up or claimed by either party under the Constitution, or any treaty or statute of, or commission held or authority exercised under, the United States; and the power to review under this paragraph may be exercised as well where the Federal claim is sustained as where it is denied," and under Article 3, section 2 of the Constitution of the United States.

The cases believed to sustain the jurisdiction of this Court are as follows:

Schofield v. *Palmer* (C. C. Va.), 134 Fed. 753;
In re Chetwood, 165 U. S. 443;
Auten v. *U. S. Nat. Bank*, 178 U. S. 125.

Statement of Case.

All of the relevant facts are fully set out in the petition, including the Agreed Statement of Facts upon which this case was tried, and will be stated in the body of this brief only in so far as will be necessary in the discussion of the questions involved.

ARGUMENT.

I.

The estate of a testator is liable for the stock owned by the testator at the time of his death until the same is transferred to another legally capable of assuming liability on the same.

It is well settled that infants are not capable of assuming stock liability upon National Bank stock.

Early v. *Richardson,* 280 U. S. 496.

Where one causes stock to be transferred to an infant, such person becomes liable for the assessment when levied by the Comptroller.

Early v. *Richardson,* 280 U. S. 496;
Aldrich v. *Bingham,* 131 Fed. 363;
Foster v. *Wilson,* 75 Fed. 797;
Riley v. *Bondi,* 64 F. (2d) 516.

The fact that the stock was transferred pursuant to Item 9 of the will of the testator, wherein he provided that the residue of his estate, real and personal, should be divided at the time of his death as follows: "one-fifth *thereof* to the children of my deceased son, Harry, namely Helen, Herbert and Allen," does not relieve his estate from liability thereon. The liability rests upon the estate the same as though he had transferred the same to his grandchildren during his lifetime.

In the opinion, filed by the Supreme Court, the court says, "as this transfer was not the act of the testator, then the estate of the testator is not liable therefor."

The executor is merely the legal representative of the deceased, and in distributing the stock under the ninth paragraph of the will, the executor was acting as the dispenser

of the goods of the dead, the gift being that of the testator to his infant grandchildren.

Mattison v. *Dent*, 176 U. S. 521.

The case of *Davis* v. *Weed*, 44 Conn. 569, 7 Fed. Cas. 3658, is authority for the principle that a Receiver of a National Bank has a valid claim for an assessment against the estate generally, against the deceased stockholder who died prior to the insolvency of the bank, but whose stock has not been transferred. It is true that the stock, which is the subject of this litigation, was transferred pursuant to the will of the testator to minors, incapable of assuming the liability. It necessarily follows that if the stock was transferred to one incapable of assuming the statutory liability on the same the legal status of the stock is the same as though it had never been transferred from the estate of the testator and therefore the estate is liable therefor; for as was held in the case of *Mattison* v. *Dent*, *supra*, contract liability still adheres to the estate until the same has been discharged by some act which shows that the new stockholder has taken the place of the old one.

Since no liability upon the bank stock could be placed upon the infants, no new stockholder has taken the place of the old one and the estate of the testator must be liable therefor.

II.

The property of the testator owned by his devisees and legatees is made subject to the payment of the stock assessment unless the stock was transferred to one legally capable of owning the same.

Since the estate of the testator has been distributed and the devisees and legatees, under his will own and hold his estate as such, such estate is properly subject to the payment of the liability in this action.

The heir is liable to the ancestor's creditors for value of personalty as well as real estate received, if ancestor's estate was settled and closed before claim accrued and the receiver of a National Bank is entitled to follow assets of deceased stockholder in the hands of beneficiary under the will to collect the assessment ordered by the Comptroller of Currency after the estate was closed and its entire assets distributed.

Luce v. *Thompson,* 36 F. (2d) 183.

A shareholder's liability (upon bank stock) continues after his death until there is a transfer of his stock upon the books of the bank * * * and notwithstanding the stockholder died and his estate was distributed and settled prior to the insolvency of the bank, the estate is still liable in the absence of such transfer of stock, *to one legally capable of holding the same* (italics added) and the estate may be followed in the hands of the distributees and legatees * * * and the whole amount of the assessment enforced to the extent of the distributive share received regardless of when the liability arose, so long as there is no transfer to one legally capable of assuming the same.

Mattison v. *Dent,* 176 U. S. 521.

The opinion of the Supreme Court is premised upon the decision of *Williams* v. *Cobb,* 242 U. S. 307, which is distinguished from the case herewith submitted, upon the ground that in that case the trustees, under the Wisconsin statute, were legally capable of holding the stock, and therefore did and could assume the liability thereon; whereas in the case now being submitted, under the authorities above cited, the infants were incapable of assuming the liability upon National Bank stock.

III.

Judgment having been given for plaintiff, subjecting the property of certain adult defendants to the payment of the liability, became a vested property right of the judgment creditor, which could not be divested unless the aggrieved party seasonably appealed from the judgment.

The Fifth Amendment to the Federal Constitution provides in part that no person shall "be deprived of life, liberty or property without due process of law."

The petitioner, herein, having brought suit against the administratrix d. b. n., c. t. a., of the estate of the testator and against all of the devisees and legatees, and judgment having been given, first, against the estate for four hundred ($400.00) dollars and interest, and, second, against the devisees and legatees of the testator in so far as it subjected their property as such to the payment of the liability and no appeal having been seasonably filed by certain adult heirs, to-wit, Leon M. Green, Alva I. Green, Aaron H. Green and Ethel Green Blatt, the judgment in favor of the petitioner, herein, against the adult devisees and legatees, in so far as it subjected their property to the payment of the liability, became a vested property right in the petitioner herein.

The opinion of the State Supreme Court specifically sets forth that the adults did not appeal in these words, "The decree of the Circuit Judge was in favor of the plaintiff and from the judgment, as rendered, the defendants, Beatrice C. Green, as administratrix and as guardian for the three minor defendants, and H. W. Hennig, as guardian *ad litem* for said minor defendants, have prosecuted this appeal. *The other defendants did not appeal.*"

In re Coleman, 106 S. C. at page 541, Supreme Court of South Carolina uses the following language, "no one ap-

pealed from this decree except the appellants named herein. That being the case, all are precluded from raising any question as to the correctness of Judge Smith's decree, excepting the appellants."

It is respectfully submitted that inasmuch as the adult defendants did not appeal and the Supreme Court of South Carolina having, by its decision, granted them relief for which they never asked, that such decision violates the Fifth Amendment to the Federal Constitution in that it deprives the petitioner herein of his vested property right, to-wit, a judgment against the adult heirs from which no appeal was taken, without due process of law; for a judgment is a vested property right;

Bank v. *Ballou* (Va.), 32 S. E. 481;
Louisiana v. *New Orleans*, 215 U. S. 177.

Respectfully submitted.

R. O. PURDY,
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Attorneys for Petitioner J. C. (Congdon) Seabury, as Receiver of the City National Bank of Sumter, S. C.

Sumter, S. C., September 24, 1934.